

House Bill 898 (AS PASSED HOUSE AND SENATE)

By: Representatives Ehrhart of the 36th, Morris of the 155th, and Harden of the 28th

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 7 of the Official Code of Georgia Annotated, relating to banking and finance,
2 so as to enact the "Georgia Merchant Acquirer Limited Purpose Bank Act"; to provide for
3 definitions; to provide for organization and control of merchant acquirer limited purpose
4 banks; to provide for the promulgation of rules and regulations; to provide for requirements
5 for articles of incorporation by merchant acquirer limited purpose banks; to provide for a
6 registered agent requirement; to provide for applicable fees; to provide for a procedure for
7 application approval and denial; to provide for the issuance and effect of certificates of
8 incorporation; to provide for liability for conducting business as a merchant acquirer limited
9 purpose bank without department approval; to provide for minimum requirements to operate
10 as a merchant acquirer limited purpose bank; to provide for permissible activities of a
11 merchant acquirer limited purpose bank; to provide for enforcement of rules and regulations;
12 to provide for related matters; to provide for an effective date; to repeal conflicting laws; and
13 for other purposes.

14 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

15 **SECTION 1.**

16 Title 7 of the Official Code of Georgia Annotated, relating to banking and finance, is
17 amended by adding a new Chapter 9 to read as follows:

18 "CHAPTER 9

19 7-9-1.

20 This chapter shall be known and may be cited as the 'Georgia Merchant Acquirer Limited
21 Purpose Bank Act.'

22 7-9-2.

23 As used in this chapter, the term:

(1) 'Commissioner' means the commissioner of banking and finance.

(2) 'Corporation' means a corporation organized under the laws of this state, the United States, or any other state, territory, or dependency of the United States or under the laws of a foreign country.

(3) 'Department' means the Department of Banking and Finance.

(4) 'Eligible organization' means a corporation that at all times maintains an office in the State of Georgia at which it or its parent, affiliates, or subsidiaries employ at least 250 persons residing in this state who are directly or indirectly engaged in merchant acquiring activities or settlement activities, including providing the following services related to merchant acquiring activities or settlement activities, either for the eligible organization or on behalf of others:

(A) Administrative support;

(B) Information technology support;

(C) Financial support; and

(D) Tax and finance support.

(5) 'Holding company' means any company that controls a merchant acquirer limited purpose bank. For purposes of this paragraph, the terms 'company' and 'control' shall have the meanings set forth in Code Section 7-1-605.

(6) 'Merchant' means an individual or entity authorized by a payment card network to accept payments in exchange for goods or services.

(7) 'Merchant acquirer limited purpose bank' means a corporation organized under this chapter and the activities of which are limited to those permitted under Code Section 7-9-11.

(8) 'Merchant acquiring activities' means the various activities associated with effecting transactions within payment card networks, including obtaining and maintaining membership in one or more payment card networks; signing up and underwriting merchants to accept payment card network branded payment cards; providing the means to authorize valid card transactions at client merchant locations; facilitating the clearing and settlement of the transactions through a payment card network; providing access to one or more payment card networks to merchant acquirer limited purpose bank affiliates, customers, or customers of its affiliates; sponsoring the participation of merchant acquirer limited purpose bank affiliates, customers, or customers of its affiliates in one or more payment card networks; and conducting such other activities as may be necessary, convenient, or incidental to effecting transactions within payment card networks.

(9) 'Payment card network' means any organization, group, system, or other collection of individuals or entities that is organized to allow participants to accept or make

payments for goods or services using a credit card, debit card, or any other payment device.

(10) 'Self-acquiring activities' means the act of a merchant, for itself or through an affiliated entity, engaging in merchant acquiring or settlement activities on its own behalf for payments it, or its affiliated entity, receives for goods and services it, or its affiliated entity, provides to consumers.

(11) 'Settlement activities' means the processing of payment card transactions to send to a payment card network for processing, to make payments to a merchant, and, ultimately, for cardholder billing.

7-9-3.

A corporation that performs merchant acquiring activities or settlement activities in this state may elect to obtain a charter from the department. Those corporations chartered by the department shall be subject to the provisions of this chapter and any rules and regulations adopted by the department for purposes of regulating chartered merchant acquirer limited purpose banks. The department shall have no authority to regulate a corporation performing merchant acquiring activities or settlement activities that has not been chartered by the department.

7-9-4.

(a) A corporation that seeks to be chartered shall file an application with the department and shall pay applicable fees established by regulation of the department to defray the costs of the investigation and review of the application.

(b) The department shall, by regulation, prescribe annual examination fees, charter fees, registration fees, and supervision fees to be paid by each merchant acquirer limited purpose bank. In addition, the department may, by regulation, prescribe reasonable application and related fees, special investigation fees, hearing fees, and fees to provide copies of any book, account, report, or other paper filed in its office or for any certification thereof or for processing any papers as required by this title. The department, in its discretion, may require the payment of such fees in any manner deemed to be efficient, including collection through automated clearing-house arrangements or other electronic means, so that the state receives funds no later than the date the payment is required to be made.

(c) The merchant acquirer limited purpose bank shall have, within one year after the date it receives its charter, no fewer than 50 employees located in this state devoted to merchant acquiring activities; provided, however, a merchant acquirer limited purpose bank may contract with an eligible organization for the performance of merchant acquiring activities, settlement activities, or any of the other services identified in paragraph (4) of Code

Section 7-9-2, and when a merchant acquirer limited purpose bank enters into such contracts with an eligible organization for merchant acquiring activities, settlement activities, or any other services identified in paragraph (4) of Code Section 7-9-2, the minimum number of employees in this state shall be determined by the commissioner at a level to assure the continued and substantive presence of the merchant acquirer limited purpose bank in this state for the purpose of conducting its corporate affairs and operations. If a merchant acquirer limited purpose bank contracts with an eligible organization that is an affiliate of the merchant acquirer limited purpose bank, the commissioner shall consider the eligible organization's or its parent's, affiliates', or subsidiaries' employees engaged on behalf of the merchant acquirer limited purpose bank as employees of the merchant acquirer limited purpose bank for purposes of complying with this subsection.

7-9-5.

(a) A merchant acquirer limited purpose bank shall have articles of incorporation signed by the incorporator and shall set forth in the English language:

(1) The name of the merchant acquirer limited purpose bank;

(2) The street address and county where the main office will be located;

(3) The name of the initial registered agent;

(4) The street address where its initial registered office will be located;

(5) A statement that "This corporation is subject to the "Georgia Merchant Acquirer Limited Purpose Bank Act";

(6) The aggregate number of shares which the merchant acquirer limited purpose bank shall have authority to issue, and:

(A) If the shares are to consist of one class only, the par value of each of the shares; or

(B) If the shares are to be divided into classes, the number of shares of each class, the par value of each share of each class, a description of each class, and a statement of the preferences, redemption provisions, qualifications, limitations, restrictions, and the special or relative rights granted to or imposed upon the shares of each class;

(7) The term for which the merchant acquirer limited purpose bank is to exist, which shall be perpetual unless otherwise limited; and

(8) Any provision not inconsistent with law which the incorporators may choose to include for the regulation of the internal affairs and business of the merchant acquirer limited purpose bank.

(b) It shall not be necessary to set forth in the articles of incorporation any of the corporate or operational powers set forth in this chapter.

(c) The applicant shall file with the department, in triplicate, the articles of incorporation, together with any fee required by the department. Such filing shall constitute an

application for a charter and approval to operate as a merchant acquirer limited purpose bank. Immediately upon the filing of the articles of incorporation, the department shall certify one copy thereof and return it to the applicant, who shall, in conformity with Code Section 7-1-7 and on the next business day following the filing of the articles, transmit for publication in the newspaper which is the official organ of the county where the merchant acquirer limited purpose bank will be located a copy of the articles or, in lieu thereof, a statement that reads substantially as follows:

'An application for a charter to operate as a merchant acquirer limited purpose bank to be known as the _____ and to be located at _____ in _____ County, Georgia, will be made to the Secretary of State of Georgia in accordance with Chapter 9 of Title 7 of the Official Code of Georgia Annotated, known as the "Georgia Merchant Acquirer Limited Purpose Bank Act." A copy of the articles of incorporation of the proposed merchant acquirer limited purpose bank and the application have been filed with the Department of Banking and Finance.'

The articles of incorporation or the statement must be published once a week for two consecutive weeks with the first publication occurring within ten days of receipt by the newspaper of the articles of incorporation or statement.

(d) Each merchant acquirer limited purpose bank shall name a registered agent and inform the department and the Secretary of State of its current registered agent.

(e) The administration of business and affairs of a merchant acquirer limited purpose bank shall be the responsibility of a board of directors consisting of at least three directors, a majority of whom shall be residents of this state.

7-9-6.

(a) An application to the department to charter a merchant acquirer limited purpose bank shall include:

(1) Any information desired by the department in order to evaluate the proposed institution which shall be made available in the form specified by the department;

(2) A certificate of the Secretary of State showing that the proposed name of the merchant acquirer limited purpose bank has been reserved pursuant to Code Section 7-1-131; and

(3) Applicable fees established by regulation of the department to defray the expense of the investigation required by Code Section 7-9-7.

(b) An application to the department to own or control a merchant acquirer limited purpose bank shall include:

(1) Any information desired by the department in order to evaluate the proposed transaction which shall be made available in the form specified by the department; and

(2) Applicable fees established by regulation of the department to defray the expense of the investigation.

7-9-7.

(a)(1) Upon receipt of the articles of incorporation and the filings and fees from the applicant as required under this chapter, the department shall conduct such investigation as it may deem necessary to ascertain whether it should approve the proposed merchant acquirer limited purpose bank. The department shall approve the charter of a merchant acquirer limited purpose bank if it determines in its discretion that:

(A) The articles of incorporation and supporting items satisfy the requirements of this chapter;

(B) The character and fitness of the applicant, directors, and proposed officers are such as to warrant the belief that the business of the proposed merchant acquirer limited purpose bank will be honestly and efficiently conducted; and

(C) The capital structure of the merchant acquirer limited purpose bank is adequate in relation to the amount and character of the anticipated business of the merchant acquirer limited purpose bank.

(2) Within 90 days after receipt of the articles of incorporation and the filings and fees from the applicant as required by this chapter, the department shall approve or disapprove the charter of the proposed merchant acquirer limited purpose bank. The department may impose conditions to be satisfied prior to the issuance of its approval of the charter of a merchant acquirer limited purpose bank. If the department, in its discretion, approves the charter of the proposed merchant acquirer limited purpose bank with or without conditions, it shall deliver its written approval of the articles of incorporation and charter to the Secretary of State and notify the applicant of its action. If the department, in its discretion, disapproves the charter of the proposed merchant acquirer limited purpose bank, it shall notify the applicant of its disapproval of the charter and state generally the unfavorable factors influencing its decision. The decision of the department shall be conclusive, except that it may be subject to judicial review as provided in Code Section 7-1-90.

(b) In the event the department denies an application to charter a merchant acquirer limited purpose bank or an application to own or control a merchant acquirer limited purpose bank, the applicant may submit a new application at any time following notice of final denial. The applicant shall not be prejudiced by any prior denials by the department.

7-9-8.

The Secretary of State shall immediately issue a certificate of incorporation to a proposed merchant acquirer limited purpose bank upon submission of:

(1) Written approval of the articles of incorporation by the department with a copy attached;

(2) An affidavit executed by the duly authorized agent or publisher of a newspaper swearing that the articles of incorporation or a summary statement publication as provided for in Code Section 7-9-5 have been published; and

(3) All required fees and charges required by law

so long as name of the proposed merchant acquirer limited purpose bank continues to be reserved or is available. The Secretary of State shall retain on file a copy of the certificate, the articles of incorporation, the department's approval of the articles of incorporation, and the publisher's certificate.

7-9-9.

(a) The corporate existence of the merchant acquirer limited purpose bank shall begin upon the issuance of a certificate of incorporation by the Secretary of State. Those persons who subscribed for shares prior to filing of the articles, or their assignees, shall be shareholders in the merchant acquirer limited purpose bank. The department shall have full authority to regulate and supervise the activities of promoters, incorporators, subscribers for shares, and all persons soliciting offers to subscribe for shares in any merchant acquirer limited purpose bank established under this chapter. Any corporation in the process of seeking approval of a charter as a merchant acquirer limited purpose bank shall be classified as a merchant acquirer limited purpose bank in formation and persons named in the articles of incorporation or approved by the department as initial directors of such entity shall not be considered 'agents' or 'broker-dealers' as defined in Code Section 10-5-2.

(b) A certificate of incorporation shall be conclusive evidence that a merchant acquirer limited purpose bank has been incorporated; however, the state may institute proceedings to dissolve, wind up, and terminate a merchant acquirer limited purpose bank in conformity with Code Section 7-1-92 and applicable provisions of this chapter.

(c) A merchant acquirer limited purpose bank may begin business when:

(1) Capital stock of the merchant acquirer limited purpose bank satisfies the requirements of Code Section 7-9-11;

(2) Bylaws of the merchant acquirer limited purpose bank have been filed with the department;

(3) A registered agent and registered office for the merchant acquirer limited purpose bank has been designated in conformity with Code Section 7-1-132;

(4) The merchant acquirer limited purpose bank has been organized and is ready to begin the business for which it was incorporated;

(5) All conditions imposed by the department in giving its approval of the charter of the proposed merchant acquirer limited purpose bank under this chapter have been satisfied; and

(6) The department has received an affidavit attesting that the requirements of this subsection have been satisfied signed by the president or secretary and at least a majority of the directors of the merchant acquirer limited purpose bank.

7-9-10.

The applicant who charters a merchant acquirer limited purpose bank which transacts business before its capital stock have been paid in as required under this chapter shall be jointly and severally liable to creditors for the amounts not paid in by subscribers or any other deficiencies. Such liability shall be deemed an asset of the merchant acquirer limited purpose bank and may be enforced by it, its successors or assignees, by a shareholder suing derivatively, or by a receiver appointed by the department.

7-9-11.

A merchant acquirer limited purpose bank shall at all times maintain capital stock and paid-in surplus as required by policies of the department but in no event less than \$3 million.

7-9-12.

(a) A merchant acquirer limited purpose bank shall only accept deposits from a corporation that owns a majority of the shares of the merchant acquirer limited purpose bank. A merchant acquirer limited purpose bank shall not operate in any manner that attracts depositors from the general public, and no deposit shall be withdrawn by the depositor by check or similar means for payment to third parties or others. A merchant acquirer limited purpose bank shall not accept 'brokered deposits' as that term is defined in the Federal Deposit Insurance Act as such existed on January 1, 2012, or the regulations adopted by the Federal Deposit Insurance Corporation in force and effect on January 1, 2012.

(b) A merchant acquirer limited purpose bank shall conduct its deposit-taking activities only from a single location within this state.

(c) A merchant acquirer limited purpose bank may apply to receive deposit insurance from the Federal Deposit Insurance Corporation or its successor agency.

(d) Notwithstanding subsection (a) of this Code section, the business conducted by a merchant acquirer limited purpose bank shall be merchant acquiring activities.

(e) A merchant acquirer limited purpose bank shall not engage in self-acquiring activities.

7-9-13.

(a) All merchant acquirer limited purpose banks chartered by the department shall be subject to supervision, regulation, and examination by the department, including, but not limited to, the examination powers as provided in Code Sections 7-1-64 through 7-1-73, and the department shall have all enforcement powers provided in this title.

(b) In the event any chartered merchant acquirer limited purpose bank does not conduct its activities within the limitations provided in Code Section 7-9-11, the department may require such merchant acquirer limited purpose bank to cease all unauthorized activities. In the event such chartered merchant acquirer limited purpose bank fails to abide by such order, the department may:

(1) Impose upon the chartered merchant acquirer limited purpose bank or its parent holding company a penalty of up to \$10,000.00 per day for each day such order is violated; and

(2) Require divestiture of such chartered merchant acquirer limited purpose bank by any holding company not qualified to acquire such chartered merchant acquirer limited purpose bank on the date it ceased to operate within the limitations imposed by Code Section 7-9-11 and became a bank for purposes of this title.

(c) The department shall have the power to promulgate rules and regulations implementing the provisions of this chapter."

SECTION 2.

This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval.

SECTION 3.

All laws and parts of laws in conflict with this Act are repealed.